IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.2367 of 1999
Date of decision : 8.11.2006

R.P.Paliwal

....Petitioner

Versus

M/s Champol Engineers Pvt. Ltd.

...Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

....

Present : Mr.R.K.Jain, Advocate
for the petitioner.

Mr. A.P.Bhandari, Advocate
for the respondent.

...

MAHESH GROVER, J.(Oral)

The present revision has been preferred by the landlord against the orders of the Appellate Authority dated 11.5.1998.

Briefly stated, the facts of the case are that the petition under Section 13 of the Haryana Urban (Control of Rent & Eviction) Act, 1973 (hereinafter referred to as 'the Act') was initiated by the petitioner against the respondent who is a tenant in the premises bearing No.32-D/E, situated in D.L.F. Industrial Area, Part-I, Faridabad (hereinafter known as 'demised premises'). The demised premises were initially in the name of the wife of the petitioner, Smt. Usha Paliwal, who suffered a decree in his favour on 26.5.1990. The premises were rented out to the respondent by Smt. Usha Paliwal w.e.f. 22.11.1977 at a monthly rent of Rs.500/-.

The petition under Section 13 of the Act was preferred on the grounds of non-payment of rent and personal necessity. The rent having been paid before the Rent Controller, the only ground that survived was of bona fide need and personal necessity.

The respondent in his written statement had contested the petition and admitted the tenancy and the rate of rent. However, he questioned the decree dated 26.5.1990 passed in favour of the present petitioner to say that it was mala fide and obtained with an object to defeat the provisions of the Act.

On the pleadings of the parties, the following issues were framed:-

1. Whether the respondent is liable to be ejected from the premises in dispute on the ground of personal necessity? OPP

2. Whether the petition is not maintainable? OPR

3. Relief.

The Rent Controller thereafter went on to allow the petition of the petitioner and ordered the eviction of the respondent from the demised premises. An appeal against the same resulted in its reversal and the learned Appellate Authority vide its order dated 11.5.1998 dismissed the eviction petition.

Aggrieved by the aforesaid order of the Appellate Authority, the petitioner is in revision and has contended to say that the Appellate Authority had no jurisdiction to go into the veracity of the compromise decree passed as a measure of family arrangement. That apart, it was contended that there was ample evidence on record

to show that the demised premises were indeed required for the bona fide need of the petitioner who had retired from the service and wanted to set up his own industry. In support of the aforesaid contention Mr. Jain relied upon the following judgments:-

1. Amteshwar Anand v. Virender Mohan Singh and others 2006(1) P.L.R. 214
2. Som Dev and others v. Rati Ram and another 2006(1) RCR (Civil) 209
3. Ashwani Kumar Rana v. Balsharan Gautham and another 2005 (1)P.L.R. 389
4. Radhe Sham v. Ruchi Rajput 2005(3) P.L.R. 167

The present petition was also resisted by the respondent by contending that the transfer of the demised premises by way of a collusive decree which is five days after the retirement of the petitioner was a sham transaction made just to circumvent the provisions of the Act and, therefore, could not be relied upon.

I have heard learned counsel for the parties and am of the considered opinion that the petition deserves to succeed. The petitioner who is husband of Smt. Usha Paliwal, the original landlord of the respondent, had suffered a decree in favour of her husband. The Appellate Authority relied upon **Bhoop Singh v. Ram Singh Major & others** AIR 1996 SC 196 to discard the aforesaid decree on the ground that the same had not been registered. I am afraid the Appellate Authority fell in grave error by going into the challenge made by the respondent to the family settlement in proceedings under the Rent Act.

In the proceedings under the Act the veracity of the family settlement and a consequent decree suffered on its basis could not be questioned at the instance of the tenant. The Rent Controller and the Appellate Authority exercising its powers under the Act can confine itself to the issues raised under the Act and cannot enter the controversy which involves the title, the validity or invalidity thereof. It certainly had the power to look into the aspect of the relationship of landlord or tenant and whether it existed or not. But in the garb of deciding this issue it could not travel beyond the domain specified by such an issue to question the title of the landlord.

Besides, the decree dated 26.5.1990 was suffered by the wife in favour of her husband in the court of law wherein claim as raised by the petitioner was admitted by his wife.

This Court in **Ram Lal v. Harbhagwan Dass,** 1995(1) RCR(Rent) 90 (P&H) has also recognised the oral partition of Hindu Undivided Family property. Once the law recognizes the transfer on the basis of a family settlement even on the basis of oral settlement then it could have been questioned only by the interested/affected party on the ground of fraud or collusion. But the tenant in the proceedings under the Act certainly had no locus to challenge the family settlement and the consequent transfer on its basis. In **Ashwani Kumar Rana v. Balsharan Gautham**, 2004(2) RCR (Rent) 559 it has been held that the family settlement cannot be questioned by a tenant.

In view of the above, there is little hesitation to hold that the respondent had no right to question the decree and the family

settlement made in favour of the petitioner.

The next question that is to be determined is as to whether the petitioner required the demised premises for his own use and whether the bona fide need existed. There is evidence on record to show that the petitioner had retired from service and had the necessary expertise and the funds to start his own business. Even the Appellate Authority has noticed that the petitioner retired as Air Commodore from Indian Air Force on 31.5.1990 and had received Rs.4,25,000/- as retirement benefits and he had the necessary knowledge to set up a unit for manufacturing packaging material in the shape of corrugated boxes. The project report had also been got prepared by the petitioner for the said purpose. The need of the petitioner, therefore, stands established from the evidence on record.

In view of the above, once it is established that the petitioner is the landlord and requires the premises for his own personal use for setting up an industry, there would be no escape from the inevitable conclusion but to accept the petition and direct the eviction of the respondent-tenant.

Mr. A.P.Bhandari, learned counsel for the respondent pleaded for time to vacate the premises as the respondent is in occupation of the same since 1977 and would require some time to vacate the demised premises.

The prayer is accepted subject to the condition that the respondent furnishes an undertaking before the Rent Controller at Faridabad within a period of four weeks from today to hand over the vacant possession of the demised premises to the petitioner. In case

such undertaking is filed, the eviction of the respondent shall be kept in abeyance for three months thereafter. But in the absence of an undertaking, the petitioner shall be at liberty to execute the order of eviction. The respondent shall, however, continue to pay the rent for the period he is in occupation of the demised premises.

Petition allowed.

8.11.2006 (MAHESH GROVER)
JUDGE

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